

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE UNIVERSITY OF WASHINGTON, a )  
Washington state agency; THE CENTER FOR ) No. [ ]  
HUMAN RIGHTS AT THE UNIVERSITY OF )  
WASHINGTON, a research center created by ) COMPLAINT FOR  
state law; and ANGELINA GODOY, director of ) DECLARATORY RELIEF FOR  
the Center; ) VIOLATING FOIA  
Plaintiffs, )  
v. )  
UNITED STATES DEPARTMENT OF )  
HOMELAND SECURITY; UNITED STATES )  
IMMIGRATION AND CUSTOMS )  
ENFORCEMENT; and UNITED STATES )  
CUSTOMS AND BORDER PROTECTION; )  
Defendants. )

Plaintiffs the University of Washington, the Center for Human Rights at the University of Washington (“UWCHR”), and Angelina Godoy allege as follows:

**INTRODUCTION**

1. Plaintiffs bring this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended to enjoin the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), and Customs and Border Protection (“CBP”) (collectively, the “DHS Defendants”) from continuing to improperly withhold agency records concerning federal immigration enforcement in Washington State.

2. The records requested are pertinent to a variety of immigration affairs in the state of Washington. The public has a substantial interest in the due process and civil liberties issues arising from federal immigration enforcement. Washington State's highest elected officials, including its Governor, Attorney General, and representatives in the U.S. Congress, have repeatedly raised concerns about ICE's enforcement practices in Washington State.

3. As an academic center dedicated to research in the public interest, UWCHR seeks access to the requested records to assess federal authorities' immigration enforcement operations and share this information with the general public, as well as with Washington State's elected policymakers, to inform policies designed to protect Washington residents' civil liberties.

4. The DHS Defendants' refusal to produce responsive documents to Plaintiffs FOIA requests has hampered Plaintiffs' ability to inform the public and protect Washington residents.

### **JURISDICTION**

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

### **VENUE**

6. Venue in the Western District of Washington is proper under 5 U.S.C. § 552(a)(4)(B). Independently, venue is proper in the Western District of Washington because all Plaintiffs reside in Seattle, Washington.

### **PARTIES**

7. Plaintiff the University of Washington is a Washington State agency and the state's largest public research university. Its business offices are in Seattle, Washington.

8. Plaintiff the Center for Human Rights is an organization within the University of Washington. The Washington Legislature created the Center for Human Rights in 2009 to expand opportunities for Washington residents to receive a world-class education in human

rights, generate research data and expert knowledge to enhance public and private policymaking, and to be an academic center for human rights teaching and research. The Center for Human Rights focuses on, among other things, the rights of all persons to security against violence. Its offices are in Seattle, Washington.

9. Plaintiff Angelina Godoy is the director of the Center for Human Rights and the Helen H. Jackson Chair in Human Rights at the Jackson School of International Studies at the University of Washington. Ms. Godoy resides in Seattle, Washington.

10. Defendant United States Department of Homeland Security is a federal agency within the meaning of 5 U.S.C. § 552 and 5 U.S.C. § 552a(a)(1).

11. Defendant United States Immigration and Customs Enforcement is a federal agency within the meaning of 5 U.S.C. § 552 and 5 U.S.C. § 552a(a)(1).

12. Defendant United States Customs and Border Protection is a federal agency within the meaning of 5 U.S.C. § 552 and 5 U.S.C. § 552a(a)(1).

## **FACTS**

### **UWCHR'S FOIA Requests to DHS**

13. Starting in September 2017, UWCHR sent the DHS Defendants several dozen FOIA requests seeking documents relevant to the human rights impact of federal immigration enforcement in Washington State; of these, Plaintiffs object to DHS Defendants' handling of twelve. To date, the DHS Defendants have only produced documents responsive to two of these twelve FOIA requests, though additional responsive documents have been improperly withheld in both cases. In all twelve requests, the DHS Defendants have responded in one of three ways: 1) acknowledging receipt of FOIA requests and then subsequently missing deadlines to produce documents; 2) denying FOIA requests based upon capricious interpretations of third-party consent requirements; and 3) improperly withholding responsive documents.

**DHS Defendants Miss Deadlines to Produce Documents**

**FOIA Request ICE0009**

14. On September 18, 2017, Ms. Godoy made, on behalf of the UWCHR, a written FOIA request to ICE. The request sought:

[A]ll records (including written documents, files, electronic communications, records or reports of any sort) describing or reviewing the placement of detainees in segregation (including both administrative and disciplinary segregation) at the Northwest Detention Center in Tacoma, WA, from September 2013 to the present. This includes both notifications of initial placement in segregation as well as regular reviews performed in cases of extended segregation. We ask that documents be redacted to protect inmate privacy.

This request to ICE is hereinafter referred to as “ICE0009.”

15. On October 4, 2017, ICE acknowledged receipt of ICE0009 and provided a tracking number. *See* Ex. A.

16. On November 8, 2017, Ms. Godoy emailed ICE asking when UWCHR could expect delivery of document responsive to ICE0009, noting that on DHS’ FOIA website at that time, the estimated date for document delivery was November 5, 2017. *See* Ex. B. The ICE FOIA Office did not respond to this email.

17. On February 23, 2018, Ms. Godoy again emailed ICE asking when UWCHR could expect delivery of documents responsive to ICE0009. *See* Ex. C. The ICE FOIA Office responded that “[t]his request is active and the program office[s] have been tasking to search for responsive records.” *See* Ex. D.

18. As of the filing of this Complaint, ICE has not produced any documents responsive to ICE0009. DHS’ FOIA website, as of September 10, 2018, estimates documents will be delivered by December 20, 2017.

19. On information and belief, ICE possesses documents responsive to ICE0009.

**FOIA Request ICE0021**

20. On March 13, 2018, Ms. Godoy made, on behalf of the UWCHR, a written FOIA request to ICE. The request sought:

[A]ll documentation related to grievances, formal or informal, and their resolution, at the Northwest Detention Center in Tacoma, WA, from January 1, 2012 to March 10, 2018. Under the PBDNS 2011 standards, each facility is expected to maintain a “grievance log” (see p. 416 of the complete standard), into which information about the resolution of informal grievances and the processing of formal (written) grievances should be entered. We are requesting copies of the information contained in this log for 2012-2018. We ask that personally identifiable information be redacted from this log to protect the privacy of third parties.

This request to ICE is hereinafter referred to as “ICE0021.”

21. On March 26, 2018, ICE acknowledged receipt of ICE0021 and provided a tracking number. *See* Ex. E.

22. As of September 10, 2018, the DHS FOIA website lists an estimated document delivery date of April 29, 2018.

23. As of the filing of this Complaint, ICE has not produced any documents responsive to ICE0021.

24. On information and belief, ICE possesses documents responsive to ICE0021.

**FOIA Request ICE0024**

25. On April 26, 2018, Ms. Godoy made, on behalf of the UWCHR, a written FOIA request to ICE. The request sought:

[A] sortable spreadsheet of all encounters, arrests, and removals under the Criminal Alien Program in the Seattle Area of Responsibility during FY2017 and FY2018 to date, with columns including FBI Number, Event Number, Arrest Date, Arrest Method, Apprehension Landmark, Operation, Processing Disposition, Age Current, Citizenship Country, Gender, Complexion, Postal Code, State, City, Charging Document Issue Date, Removal Case Threat Level, Final Charge Section, Prior Removal Flag, Children Count, and Child Citizenship Country. We are not providing third party consent forms for all those whose data would be included and therefore understand that as a result, personally-identifiable information will be redacted to protect their privacy. However, the FOIA requires that all segregable information be provided to requesters, and

personally-identifiable information is segregable from the remainder of this information.

This request to ICE is hereinafter referred to as “ICE0024.”

26. On May 17, 2018, the ICE FOIA Office acknowledged receipt of ICE0024 and provided a tracking number. *See* Ex. F.

27. As of September 10, 2018, the status update on DHS’ FOIA website estimates a document delivery date of May 30, 2018.

28. As of the filing of this Complaint, ICE has not produced any documents responsive to ICE0024.

29. On information and belief, ICE possesses documents responsive to ICE0024.

### **FOIA Request CBP0002**

30. On August 8, 2017, Ms. Godoy made, on behalf of the UWCHR, a written FOIA request to CBP. The request sought:

[R]ecords (including all documents, files, correspondence, data, reports, communications or notes in electronic or written, including handwritten, form) created on or after January 1, 2012, and created by and/or in the possession of CBP’s Blaine Sector and/or its stations at Sumas, Blaine, Port Angeles or Bellingham:

- Copies of Form I-213 (“Record of Deportable/Inadmissible Alien”):
  - For each individual detained or taken into custody by stations in CBP’s Blaine Sector; and
  - For each individual transferred to stations in CBP’s Blaine sector by state or local law enforcement officials. This includes, but is not limited to, all Form I-213’s issued for which the Method of Location/Apprehension is coded OA (“Other Agency”) and/or the Narrative section mentions a state or local law enforcement agency.
- Daily Apprehension Log for individuals apprehended by stations in the CBP’s Blaine sector. This includes, but is not limited to all data and statistics relating to:
  - Length of time in the United States;
  - Country of Citizenship;
  - Complexion; and
  - Criminal Record.
- Copies of Form I-44 (“Report of Apprehension or Seizure”):
  - For each individual transferred to stations in CBP’s Blaine sector by state or local law enforcement officials; and

- For each individual stopped but not arrested by stations in CBP's Blaine sector for whom I-44's were issued.
- All records, data or statistics from the Daily Apprehension Log regarding individuals arrested by or transferred to CBP stations in Blaine sector for whom I-44's were issued. This includes but is not limited to data or statistics regarding:
  - Length of time in the United States;
  - Country of Citizenship;
  - Complexion; and
  - Criminal Record.

This request to ICE is hereinafter referred to as "CBP0002."

31. On August 9, 2017, CBP claimed that CBP0002 was "too broad in scope and did not specifically identify the records which you are seeking." *See* Ex. G. On August 17, 2017, Ms. Godoy appealed CBP's determination that CBP0002 was too broad. *See* Ex. H. On January 12, 2018, CBP offered to provide I-213s but reiterated that CBP0002 was "overly-burdensome, and cannot be processed." *See* Ex. I. Once again, Ms. Godoy appealed this decision and requested all documents responsive to CBP0002. *See* Ex. J.

32. As of the filing of this Complaint, CBP has not produced any documents responsive to CBP0002.

33. On information and belief, CBP possesses documents responsive to CBP0002.

#### **FOIA Request CBP0005**

34. On August 8, 2017, Ms. Godoy made, on behalf of the UWCHR, a written FOIA request to CBP. The request sought:

[R]ecords (including all documents, files, correspondence, data, reports, communications or notes in electronic or written, including handwritten, form) created on or after January 1, 2012, and created by and/or in the possession of CBP's Blaine Sector and/or its stations at Sumas, Blaine, Port Angeles or Bellingham:

- Copies of Form I-44 ("Report of Apprehension or Seizure"):
  - For each individual transferred to stations in CBP's Blaine sector by state or local law enforcement officials; and
  - For each individual stopped but not arrested by stations in CBP's Blaine sector for whom I-44's were issued.
- All records, data or statistics from the Daily Apprehension Log regarding individuals arrested by or transferred to CBP stations in Blaine sector for whom I-44's were issued. This includes but is not limited to data or statistics regarding:

- Length of time in the United States;
- Country of Citizenship;
- Complexion; and
- Criminal Record.

This request to CBP is hereinafter referred to as “CBP0005.”

35. On August 17, 2017, CBP acknowledged receipt of CBP0005. *See* Ex. K.

36. On August 18, 2017, CBP indicated that Ms. Godoy must provide third party authorization forms for this request. *See* Ex. L. Ms. Godoy appealed this determination in writing via CBP’s online portal on August 29, 2017. CBP received this appeal and assigned it tracking number CBP-AP-2017-084088. This appeal, and all correspondence related to it, have subsequently vanished from the online portal tracking correspondence.

37. On September 6, 2017, CBP responded via the online portal that “We agree that the request may be processed despite the fact that authorizations were not provided. We note, however, that the increasing frequency of all apprehension reports from a given sector has strained CBP resources. Accordingly, we are remanding the matter to the FOIA Division for processing.”

38. On November 13, 2017 Ms. Godoy received a phone call from an official who identified herself only as Karen, an attorney working for CBP, stating that it would take “a few months” for the request to be fulfilled but declining to give an estimated date by which would produce documents.

39. As of the filing of this Complaint, CBP has not produced any documents responsive to CBP0005.

40. On information and belief, CBP possesses documents responsive to CBP0005.

#### **FOIA Request CBP0008**

41. On January 7, 2018, Ms. Godoy made, on behalf of the UWCHR, a written FOIA request to CBP. The request sought:

[R]ecords (including all documents, files, correspondence, data, reports, communications or notes in electronic or written, including handwritten, form) created



on or after January 1, 2012, and created by and/or in the possession of CBP's Blaine or Spokane Sectors or the stations within these sectors relating to:

- Copies of Form I-213 ("Record of Deportable/Inadmissible Alien"):
  - For each individual detained or taken into custody by stations in Washington state; and
  - For each individual transferred to stations in Washington state by state or local law enforcement officials. This includes, but is not limited to, all Form I-213's issued for which the Method of Location/Apprehension is coded OA ("Other Agency") and/or the Narrative section mentions a state or local law enforcement agency.
- Daily Apprehension Log for individuals apprehended by stations in the state of Washington. This includes, but is not limited to all data and statistics relating to:
  - Length of time in the United States;
  - Country of Citizenship;
  - Complexion; and
  - Criminal Record.
- Copies of Form I-44 ("Report of Apprehension or Seizure"):
  - For each individual transferred to stations in Washington state by state or local law enforcement officials; and
  - For each individual stopped but not arrested by stations in Washington state for whom I-44's were issued.
- All records, data or statistics from the Daily Apprehension Log regarding individuals arrested by or transferred to CBP stations in Washington state for whom I-44's were issued. This includes but is not limited to data or statistics regarding:
  - Length of time in the United States;
  - Country of Citizenship;
  - Complexion; and
  - Criminal Record.

This request to CBP is hereinafter referred to as "CBP0008."

42. On January 8, 2018, CBP acknowledged receipt of CBP0008. *See* Ex. M.

43. As of the filing of this Complaint, CBP has not produced any documents responsive to CBP0008.

44. On information and belief, CBP possesses documents responsive to CBP0008.

#### **FOIA Request CBP0010**

45. On April 21, 2018, Ms. Godoy made, on behalf of the UWCHR, a written FOIA request to CBP. The request sought:

[A]ll records or reports of all of the stops, apprehensions, or encounters made by CBP agents within WA state from April 7, 2017 to the date of processing of this request.

This request to CBP is hereinafter referred to as “CBP0010.”

46. On May 31, 2018, CBP acknowledged receipt of CBP0010. *See* Ex. N.

47. As of the filing of this Complaint, CBP has not produced any documents responsive to CBP0010.

48. On information and belief, CBP possesses documents responsive to CBP0010.

**DHS Defendants Assert Capricious Interpretations of Third-Party Consent Requirements**

**FOIA Request ICE0010**

49. On October 17, 2017, Ms. Godoy made, on behalf of the UWCHR, a written FOIA request to ICE. The request sought:

[C]opies of Form I-213 (“Record of Deportable/Inadmissible Alien”) created on or after January 1, 2012, for:

- Each individual detained or taken into custody by staff from ICE's Seattle field office;
- Each individual transferred to the custody for staff from ICE's Seattle field office by CBP, or by state or local law enforcement officials. This includes, but is not limited to, all Form I-213's issued for which the Method of Location/Apprehension is coded OA (“Other Agency”) and/or the Narrative section mentions a state or local law enforcement agency.

This request to ICE is hereinafter referred to as “ICE0010.”

50. On January 8, 2018, ICE responded to ICE0010 by requesting that she clarify her request by providing third-party consent forms. *See* Ex. O. On January 16, 2018, Ms. Godoy responded, explaining why third party consent forms were not required. *See* Ex. P. When Ms. Godoy checked the status of this case on DHS’ website on March 13, 2018, the status was listed as “request for docs sent,” suggesting this argument had been accepted.

51. On March 26, 2018, ICE responded to ICE0010 without mentioning third party consent forms, instead insisting that it had no records, citing law enforcement exemptions. *See* Ex. Q.

52. On May 14, 2018, Ms. Godoy submitted an appeal of ICE's broad application of the law enforcement exemption. *See* Ex. R. ICE rejected this appeal on June 25, citing the failure to provide third party consent forms. *See* Ex. S.

53. ICE's rejection of ICE0010 was based upon a capricious interpretation of third-party consent requirements and law enforcement exemptions.

54. As of the filing of this Complaint, ICE has not produced any documents responsive to ICE0010.

55. On information and belief, ICE possesses documents responsive to ICE0010.

**FOIA Request ICE0011**

56. On October 17, 2017, Ms. Godoy made, on behalf of the UWCHR, a written FOIA request to ICE. The request sought:

[A]ll Field/Fugitive Operations worksheets, significant event notifications, and significant incident reports for ICE's Seattle field office created on or after January 1, 2012.

This request to ICE is hereinafter referred to as "ICE0011."

57. On February 2, 2018, ICE rejected ICE0011 in its entirety citing law enforcement exemptions and requirements for third-party consent. *See* Ex. T. Ms. Godoy submitted an appeal on March 9, 2018; on March 20, 2018, ICE responded positively to the appeal, indicating that upon further review the agency had determined that non-exempt information could be released. *See* Ex. U. Yet on April 10, 2018, ICE once again rejected ICE0011 claiming that it required third-party authorization. *See* Ex. V.

58. ICE's rejection of ICE0011 was based upon a capricious interpretation of third-party consent requirements.

59. As of the filing of this Complaint, ICE has not produced any documents responsive to ICE0011.

60. On information and belief, ICE possesses documents responsive to ICE0011.

1 **FOIA Request ICE0013**

2 61. On December 5, 2017, Ms. Godoy made, on behalf of the UWCHR, a written  
3 FOIA request to ICE. The request sought:

4 [A]ll forms I-860, M-444, I-871 and I-851 regarding removals of persons apprehended  
5 in Washington State from January 1, 2012 to the present.

6 This request to ICE is hereinafter referred to as "ICE0013."

7 62. On March 16, 2018, ICE demanded third-party consent forms. *See* Ex. W. The  
8 same day, Ms. Godoy explained to ICE why ICE0013 did not require third-party consent  
9 forms. *See* Ex. X.

10 63. On May 15, 2018, ICE rejected ICE0013 citing a lack of third-party consent  
11 forms. *See* Ex. Y. On May 25, 2018, Ms. Godoy appealed this decision. *See* Ex. Z. On June  
12 28, 2018, ICE responded to the May 25 appeal; without mentioning third-party consent forms,  
13 the agency argued for the first time that it would not process the request because it was overly  
14 burdensome. *See* Ex. AA.

15 64. ICE's rejection of ICE0013 was based upon a capricious interpretation of third-  
16 party consent requirements.

17 65. As of the filing of this Complaint, ICE has not produced any documents  
18 responsive to ICE0013.

19 66. On information and belief, ICE possesses documents responsive to ICE0013.

20 **DHS Defendants Improperly Withhold Responsive Documents**

21 **FOIA Request ICE0020**

22 67. On January 15, 2018, Ms. Godoy made, on behalf of the UWCHR, a written  
23 FOIA request to ICE. The request sought:

24 [A]ll correspondence between ICE employees and employees of the Washington state  
25 Department of Licensing from January 1, 2016 to January 15, 2018. Recent reporting by  
26 Nina Shapiro in The Seattle Times has documented the WA DOL's regular practice of  
27 handing over information about drivers' license applicants to ICE 20 to 30 times per  
month; WA DOL spokeswoman Christine Anthony has stated that this practice took

place when immigration enforcement authorities emailed License Integrity Unit seeking information. We are therefore requesting copies of all emails exchanged between ICE personnel and any individual or office using an email ending in @dol.wa.gov, including any attachments, from January 1, 2016 to January 15, 2018.

This request to ICE is hereinafter referred to as “ICE0020.”

68. On April 25, 2018, ICE requested the UWCHR narrow its request. *See* Ex. BB. During a phone call on April 26, 2018, summarized in an email that same day, Ms. Godoy agreed to narrow the scope of ICE0020. *See* Ex. CC.

69. On May 21, 2018, ICE informed Ms. Godoy that it had located 285 pages of responsive documents but withheld four pages of otherwise responsive material claiming FOIA Exemptions (b)(5). *See* Ex. DD. Ms. Godoy appealed this decision on June 13, 2018 and ICE rejected the appeal on July 13, 2018 claiming that the withheld documents were blank. *See* Exs. EE & FF.

70. ICE’s withholding of the four responsive pages by claiming they are “blank” is facially implausible as the Washington State Department of Licensing responded to at least one of those pages with an email stating “Here is the information you requested.” On information and belief, these four pages are responsive to ICE0020 and are improperly being withheld.

### **FOIA Request ICE0023**

71. On April 26, 2018, Ms. Godoy made, on behalf of the UWCHR, a written FOIA request to ICE. The request sought:

[A]ll Detainee Transfer Notification Forms and Forms I-216 generated in cases of transfers of detainees from the Northwest Detention Center in Tacoma to NORCOR in The Dalles OR, and from NORCOR to the NWDC, from January 1, 2016 to May 1, 2018. We are not providing a third party consent forms for the affected individuals and therefore understand that their names, addresses, and social security numbers will be redacted to protect their privacy.

This request to ICE is hereinafter referred to as “ICE0023.”

72. On May 8, 2018, ICE acknowledged receipt of ICE0023 and provided a tracking number. *See* Ex. GG.

73. On May 18, 2018, ICE sought a “clarification and/or narrowing of the timeframe for the request.” *See* Ex. HH. On the same day, Ms. Godoy agreed to limit the timeframe of ICE0023 to the dates January 1, 2017 to May 1, 2018. *See* Ex. II.

74. On August 23, 2018, ICE stated that it had identified 54 pages and 1 excel workbook responsive to ICE0023 and provided these documents, in redacted form, to UWCHR. *See* Ex. JJ. However, these records were all from 2018; no 2017 documents were included, nor was there any explanation for their omission. UWCHR appealed the withholding of responsive documents on September 11, 2018. *See* Ex. KK.

75. As of the filing of this Complaint, ICE has not produced all documents responsive to ICE0023.

### **FIRST CAUSE OF ACTION**

#### **Violation of FOIA by the DHS Defendants for Failure to Make Promptly Available the Records Sought by Plaintiffs’ Requests.**

1. Plaintiffs have a legal right under FOIA to obtain the agency records they requested in FOIA requests ICE0009, ICE0021, ICE0024, CBP0002, CBP0005, CBP0008, CBP0010, ICE0010, ICE0011, ICE0013, ICE0020, and ICE0023, and there exists no legal basis for the DHS Defendants’ failure to make these records available to the public.

2. The DHS Defendants’ failure to make promptly available the records sought by UWCHR’s requests violates FOIA, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(ii), and applicable regulations promulgated thereunder.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request the Court award them the following relief:

A. Declare that the DHS Defendants have violated FOIA in its responses to the FOIA requests;

1 B. Order the DHS Defendants to immediately disclose the requested records to  
2 Plaintiffs and enter an injunction prohibiting the DHS Defendants from continuing to withhold  
3 the requested records from the public;

4 C. Award Plaintiffs their reasonable costs and attorney's fees;

5 D. Grant such further relief as the court may deem just and proper.

6 DATED this 21st day of September, 2018.

7 Davis Wright Tremaine LLP  
8 Special Assistant Attorneys General

9 By /s/ Jordan Clark

10 Jordan Clark, WSBA #49659  
11 1201 Third Avenue, Suite 2200  
12 Seattle, WA 98101-3045  
13 Telephone: (206) 757-8176  
14 Fax: (206) 757-7176  
15 E-mail: jordanclark@dwt.com

16 Thomas R. Burke\*  
17 505 Montgomery Street, Suite 800  
18 San Francisco, CA 94111-6533  
19 Telephone: (415) 276-6552  
20 Fax: (415) 276-6599  
21 E-mail: thomasburke@dwt.com

22 Attorneys for Plaintiffs the Center for  
23 Human Rights at the University of  
24 Washington, the University of Washington  
25 and Angeline Godoy

26 *\*pro hac vice application forthcoming*